(1)

97 667 SEP 25 1997

OFFICE OF THE CLERK

Number

in the

Supreme Court of the United States

October 7, 1996, Term

Harry P. Miller,
Plaintiff-Petitioner,

against

Larry Silverstein et al.,
Defendants-Respondents,

on petition for writ of certiorari
to the United States Court of Appeals
for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

The lower courts failed to address complaints of the petitioner but issued orders claiming assassination is a power vested in the Presidency or Congress of the United States of America; wherefore a writ of certiorari is compelled.

Harry P. Miller, pro se
Post Office Box 750074
Forest Hills NY 11375-0074
718-896-3037

22 pp

QUESTIONS PRESENTED

I Is the Presidency of the United States of America vested authority to assassinate: secretly order deaths of natural persons without process of war or law?

II Is the Congress of the United States of America vested authority to assassinate: secretly declare war?

III Is the Judiciary of the United States of America vested authority to sanction assassination: secretly promote murder by some process of law?

IV Was the matter of Miller v Silverstein properly removed from the Supreme Court of the State of New York County of Queens to the United States District Court Eastern District of New York by United States Attorney Zachary W. Carter?

V Was the matter of Miller v Silverstein properly heard by the United States Court of Appeals for the Second Circuit?

VI How many American soldiers abandoned in Southeast Asia, and how many children, grandchildren, wives and parents of American soldiers "returned to Hanoi," have died in the Socialist Republic of Vietnam since Miller v Silverstein was moved to the Federal courts?

VII Did the courts address any of the complaints filed?

VII Did any of the judges below understand the plaintiff's complaints?

VIII Did any of the judges below attempt to clarify matters they say they may have misapprehended?

IX Did the judges below behave competently?

X What happened to the initial presentation of this petition received in United States First Class Mail EXPRESS number EI865674241US in the office of the Clerk of the Supreme Court of the United States 25 September 1997?

XI Will any people have impunity to kill without due process of war or law?

PARTIES

Harry P. Miller, Plaintiff-Petitioner,
pro se 718-896-3037

Harry P. Miller
Post Office Box 750074
Forest Hills NY 11375; and

Larry Silverstein, deceased Defendant,
represented by 212-683-3800

Leon Mandel, Esq.
Dinkes & Morelli
112 Madison Ave.
New York NY 10016; and

New York City, Defendant-Respondent,
represented by 212-788-0874

Elizabeth I. Freedman, Esq.
Office of Corporation Counsel of the
City of New York
100 Church Street
New York NY 10007; and

WNBC TV Channel 4, Defendant Respondent,
represented by 212-664-4017

Lynn B. Oberlander, Esq.
NBC Legal Department
30 Rockefeller Plaza
New York NY 10112; and

H. Ross Perot, Defendant-Respondent,
represented by 516-747-0300

Loretta M. Gastwirth, Esq.
Metzer, Lippe, Goldstein, Wolf and Schlissel, P.C.
190 Willis Avenue
Mineola NY 11501; and

Richard M. Nixon, deceased Federal Defendant,
and
John W. Vessey, Federal Defendant-Respondent,
and
Collin L. Powell, Federal Defendant-Respondent,
and
William J. Clinton, Federal Defendant-Respondent,
represented by 212-514-2218

Hon. Seth P. Waxman
Acting Solicitor General of the United States
Room 5614
Department of Justice, attention Emily Spadoni
950 Pennsylvania Avenue, N.W.
Washington DC 20530-0001

TABLE OF CONTENTS

Questions presented	i-ii
Parties	iii-iv
Table of contents	v
Table of authorities	vii
Reports:	
Summary Order 96-6303 September 9, 1997, United States Court of Appeals for the Second Circuit	2-5, 11-15
Order 93-CV-2871 November 5, 1996, United States District Court Eastern District of New York	4
Jurisdiction	5
Provision involved	5
Statement of case	6, 1-5
Reasons for allowance of writ	6-10
Appendix	11-15

TABLE OF AUTHORITIES

The Constitution of the United States of America
Article Three

page 5

Number

in the

Supreme Court of the United States

October 7, 1996, Term

Harry P. Miller,

Plaintiff-Petitioner,

against

Larry Silverstein et al.,

Defendants-Respondents.

On petition for writ of certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

To the Justices of the Supreme Court of the United States comes now Harry P. Miller, plaintiff in the matter of Harry P. Miller against Larry Silverstein, New York City, WNBC TV Channel 4, H. Ross Perot, Richard M. Nixon, John W. Vessey, Collin L. Powell, and William J. Clinton, number 009528-93 in the Supreme Court of the State of New York County of Queens, number 93-CV-2871 in the United States District Court Eastern District of New York, and number 96-6303 in the United States Court of Appeals for the Second Circuit to affirm under penalty of perjury that:

Summary Order 96-6303 filed September 9, 1997, in ~~the District Court~~ does not address any of the plaintiff's-petitioner's complaints in the lower courts. The order states that the Honorables Thomas J. Meskill, Dennis Jacobs and Edward R. Korman together with the Honorable Carol Bagley Amon found the complaints "difficult to decipher" and then falsely states that "Miller alleged that the proceeds [of heroin distribution by Silverstein's codefendants] are used for such purposes as covering up the 'Watergate Scandal' and buying the 'cooperation' of the NYC Police Department." None of the allegations of crimes presented in the order had ever been presented as torts against the petitioner. None of the complaints filed are even mentioned in the order.

The complaints filed by the plaintiff-petitioner were that agents and Police Officers of the New York City Police Department had assaulted and robbed the plaintiff on two occasions. The codefendant City of New York, State of New York, vitiated criminal charges against its agents by filing obviously perjured depositions. And the City and State refused to accept valid complaints against their Police Officers. Codefendant Silverstein had made harassing anonymous telephone calls to 718-896-3037, traced back by the telephone company, bragging about how uniformed Police Officers helped plainclothes Police Officers escape from the second theft and assault. The codefendant National Broadcasting Company, a criminal conspirator in crimes of the codefendants being videotaped by the petitioner, assisted in violating the petitioner's rights by broadcasting a libel to assist in frightening witnesses to the assaults. The Federal codefendants and Perot had been mentioned in the original civil complaint as principals in the incidental crimes.

The original complaint was improperly moved to the District Court by Zachary W. Carter, United States Attorney for the Eastern District of New York. The petitioner had informed the Justice Department of murders of Federal officers and other crimes witnessed by him in 1969. Special Agent John W. Robinson of the Manhattan Office of the Federal Bureau of Investigation told the petitioner that the murders and other crimes of officers of Richard M. Nixon witnessed by the petitioner are sanctioned by the Justice Department of the United States. In the District Court the plaintiff-petitioner formally charged that the codefendants crimes include giving aid and comfort to enemies of the United States of America by deliberately abandoning to them loyal soldiers of the United States whom the plaintiff had been ordered to deploy in combat against them; and by deliberately abandoning to them enemy held American Prisoners Of War falsely reported upon by the petitioner's Commanding Officers.

The plaintiff-petitioner filed evidence in the District Court that reports of Company D, 151st Infantry, and of the 75th Ranger Regiment have been falsified so as to conceal relevant facts. Proof is constituted by the "combat photography" and false narratives filed in the National Archives of the United States of America from which was taken the photograph on the cover of the 1992 August issue of *Vietnam* magazine (ISSN 1046-2902, Vol. 5, No. 2) published by Col. Harry G. Summers, USA Retired. Director of the movie from which the falsified history was developed for Col. Summers and others, Lt. James E. Johnson O2335807/314-42-1938, produced it as a training film. Most of the Sergeants and commissioned Officers involved have survived to testify. Lt. Johnson was the petitioner's Platoon

Leader. The falsified history replaced reports on operations during which the petitioner was ordered to murder citizens of the United States and the future Deputy Commanding General of Forces Command for whom Col. Oliver North would carry addictive drugs on Southern Air Transport, Kenneth Himsel, was assigned as an Operations Officer of 4th Infantry Division. Lt. Johnson told the petitioner that a Clerk of Court rather than General Himsel, their former and subsequent Commanding Officer, was responsible for the drug distribution operation established in the Company compound of D, 75th Inf., while he and the petitioner were serving together at the small compound in Vietnam. Distributors of the drugs claim they have established and maintain control of American courts by supplying families of judges, district attorneys, and clerks with illicit addictive substances.

The plaintiff-petitioner in Federal jurisdiction contended that betrayal of his agents and agency constitute torts against the petitioner. The Order 93-CV-2871 dated Brooklyn, New York, November 5, 1996, in the United States District Court Eastern District of New York, falsely attributes fantasies of the Honorable Carol Bagley Amon to the plaintiff-petitioner and was subject of the appeal. Its analysis is contradictory to the filings and said Federal District Court decision parses so as to claim no evidence of murder may be tried by any court if to do so might question authority of the United States Congress to sanction assassinations. These points were presented to the Court of Appeals by the petitioner; but they are not mentioned in the Summary Order 96-6303.

No people will have immunity to kill without due process of war or law.

The plaintiff-petitioner was never notified of the "stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the ninth day of September one thousand nine hundred and ninety-seven" and did not appear as falsely claimed in Summary Order 96-6303. The Judges' misfeasance helped codefendants Perot and Clinton in betrayal of families of loyal American soldiers not brought to San Francisco in June, 1997, by Perot and Col. R. A. Jones, USA Retired. The Judges' order falsely says "Miller's appeal is frivolous." Officers who betrayed the soldiers deliberately inserted falsely implicated agents of the United States of America as partially divulged in Library of Congress book cataloged number 96-34556, *SOG: the secret wars of America's commandos in Vietnam*; and they are now taking advantage of similar current destabilization of Vietnamese society to secure commercial concessions for commercial corporations by which they are ultimately retained. The costs are horrible deaths for children of loyal American soldiers and loss of jobs for U.S. citizens displaced by slave labor in Vietnam.

Statement of Jurisdiction by Constitutional Provision

The Supreme Court of the United States is established to exercise jurisdiction over decisions out of the accepted course of judicial proceedings by Article Three of the U.S. Constitution.

Statement of Case

The lower courts failed to address complaints of the petitioner but issued orders claiming assassination is a power vested in the Presidency or Congress of the United States of America; wherefore a writ of certiorari is compelled. Mss Ruth Jones 202-479-3011 told the petitioner Monday, 30 September 1997, that the office of the Clerk of Court, Supreme Court of the United States, has lost the petition and has mailed advice to the petitioner. It has not been delivered.

Reasons for Allowance of Writ

Civil complaints of injuries inflicted upon the petitioner were moved to the Federal courts in 1993 but never tried. The misfeasance has fostered crimes and more torts.

People claiming to be veterans of the petitioner's Regiment or of Special Forces of the Army of the United States have been and still are paid to commit private murders because of myth they would be experienced in assassinations sanctioned by the government of the United States and know how to invoke police suppression of evidence and witnesses. Some actual veterans have been found guilty of such murders. And officers of the United States have told members of the petitioner's Regiment that specific orders for commission of murders were passed from "the highest authority." The authority was previously attributed to executive orders of the President of the United States. But the judicial orders can now be cited. A specific law is now required to establish no U.S. citizen may be assassinated under laws of the United States.

Other observations of pertinent facts witnessed by the plaintiff are presented by:

Don C. Hall and Annette R. Hall,
I Served: F Co. airborne long range patrol 51st Inf. Republic of Vietnam 25 Sep 67 - 1 Feb 69,
A.D.Hall Publishing Co., a division of Argus, Inc.
15600 N.E. 8th Street, #B1-241
Bellevue WA 98008
©1994;

John L. Plaster, veteran of Studies and Observations Group,
SOG: the secret wars of America's commandos in Vietnam,
ISBN 0-684-81105-7 and Library of Congress 96-34557;

Gary Douglas Ford,
4 4: a LRP's narrative,
ISBN 0-8041-0913-3 and Library of Congress 92-97071;

Larry Chambers,
Recondo: LRRPs in the 101st Airborne,
ISBN 0-8041-0843-9 and Library of Congress 92-90153.

The complaints of injuries to the petitioner and incidental allegations of crime are proved by surviving witnesses, videotapes, photographs, public records and published memoirs of unquestioned pertinent authority. Suppression of evidence by the District Court seems to evidence criminal collusion there. Fantastically filed "facts" established by the District Judge's order were never presented as claimed. The District Court's order might have simply seemed silly behavior of an addict; but it sanctions assassination.

The Court of Appeals has so far departed from accepted course of law in sanctioning the District Court's misfeasance as to undermine authority of the United States. The government may have no more power to assassinate than do its citizens. Americans cannot allow government that fails to maintain rights and ordinary protection of life and reasonable order. The order and safety attainable under a government that is unquestionably known to assassinate is seen in Israel. And the *Constitution of the United States* does not claim the authority of Yahweh, but of the people.

However fantastic the Judges might wish reports of Federal assassinations to be: a large and lucrative genre of fiction is sold on basis of the fact that many rational people do believe that officers of the United States of America actually do order assassinations. No one can believe the Judges do not know President John F. Kennedy tried to have Federal officers as well as notorious criminals murder Commandante Fidel Castro. Everyone knows that pretense to the contrary will foster criminal misfeasance by Federal agents. However inaccurate some accounts might be the vast majority of people who know anything about the proprietary airlines of the United States of America know for a moral certainty that Air America, Byrd Air, Southern Air Transport and others carried illicit addictive drugs. Most realize Federally sanctioned murders are involved. A credible trial of the "fantastic" allegations published in the lower court orders of Miller v Silverstein for notorious director of soldiers of fortune, defendant H. Ross Perot, is necessary to prevent every resident of North America from believing any private enemy can find a soldier of fortune able to professionally murder under protection of his police contacts.

In June, 1997, defendant H. Ross Perot and Col. R.A. Jones (United States Army, Retired) claimed to be completing last United States operation of the Vietnam Conflict by presiding over "return to Hanoi" of all but fifty-nine surviving American Partisans who sought refuge in Hong Kong. The point was presented to the United States Court of Appeals in Miller v Silverstein by the plaintiff-petitioner. Deliberate acquiescence through silence of the Judiciary for betrayal of American soldiers by private citizens as self proclaimed agents of codefendant Clinton and State Department cannot be allowed.

The Summary Order 96-6303 September 9, 1997, truly transcribed in the following Appendix falsely states "Miller alleged that the proceeds [of the codefendants' crimes] are used for such purposes as covering up the 'Watergate scandal' and buying the 'cooperation' of the NYC Police Department." The allegation is a fantasy of the judges. Nobody heard the petitioner make that allegation. But some of the witnesses and many other people have been told by the petitioner that the proceeds of addictive drugs distributed under security of Federal assassinations are used for illegal Federal Campaign Fund contributions.

The original complaints in Miller v Silverstein were of assaults and batteries and robberies witnessed by more than a dozen bystanders who also saw Police Officers involved. Actual witnesses were not allowed to file administrative police complaints. Criminal charges were obviously deliberately sabotaged by Police Officers with District Attorney Brown. All of the witnesses now believe deliberate crimes of the Police and District Attorneys are

involved. Failure to address the complaints filed in the civil courts will prove fundamental corruption of established order and law.

WHEREFORE the Supreme Court of the United States is petitioned to order the records of Miller v Silverstein et al. be delivered to it, the complaints and questions tried, and the defendants pay the plaintiff-petitioner forty-nine million dollars and interest of nine percent per annum since July, 1993.

Instances of the plaintiff's-petitioner's fiat having been delivered to the Clerk of Court, Supreme Court of the United States, on certified affidavits of service and the original submission of this petition the twenty-fifth day of September nineteen hundred ninety-seven, this amended replacement of the forty-one petitions lost by the Office of the Clerk is

resubmitted under penalty of perjury,

Harry P. Miller

Harry P. Miller, pro se
Post Office Box 750074
Forest Hills NY 11375-0074
718-896-3037.

EDNY-bkny
93-cv-2871
Amon, J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECE DENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the ninth day of September one thousand nine hundred and ninety-seven.

Present:

Hon. Thomas J. Meskill,
Hon. Dennis Jacobs,
Circuit Judges.
Hon. Edward R. Korman,
District Judge.*

---

*Of the United States District Court, Eastern District of New York, sitting by designation.

FILED
- -x SEP 9 1997
GEORGE LANG III, CLERK

Harry P. Miller,

Plaintiff-Appellant,

v. 96-6303

Larry Silverstein, et al.,

Defendants-Appellees.

- -x

APPEARING FOR APPELLANT: Harry P. Miller, pro se, Forest Hills, New York.

APPEARING FOR APPELLEES Richard M. Nixon, John W. Vessey, Colin L. Powell and William J. Clinton: Zachary W. Carter, United States Attorney for the Eastern District of New York, Brooklyn, New York.

APPEARING FOR APPELLEE New York City: Elizabeth I. Freedman, Assistant Corporation Counsel of the City of New York, New York, New York.

[<page 1 of original | -2->]

APPEARING FOR APPELLEE H. Ross Perot: Loretta M. Gastwirth, Meltzer, Lippe, Goldstein, Wolf & Schlissel, P.C., Mineola, New York.

APPEARING FOR APPELLEE WNBC TV Channel 4: Lynn B. Oberlander, NBC Legal Department, New York.

APPEARING FOR APPELLEE Larry Silverstein: Larry [sic.] Mandel, Dinkes and Morelli, New York, New York.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States Court for the Eastern District of New York (Amon, J.), and was submitted.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said District Court be and it hereby is affirmed.

In July 1993, Miller, a Vietnam veteran, filed an amended complaint[1] in district court against Larry Silverstein, the alleged owner of "Runway 69," a Queens dance club, WNBC-TV Channel 4 television station ("WNBC"), the City of New York ("NYC"), President Clinton, former President Richard Nixon, H. Ross Perot, John W. Vessey and Colin Powell. Although difficult to decipher, the gravamen of Miller's complaint is that the named defendants committed or aided others in committing illegal acts, beginning amidst the Vietnam War, in furtherance of a conspiracy to distribute heroin. He asserted that the defendants are still engaged in heroin trafficking today and that "Goldfingers International," a business that

---

[1]In April 1993, Miller commenced his action in a state court. The action was subsequently removed to the district court and in July 1993, Miller filed an amended complaint, which incorporates his first complaint.

supplies nude dancers to nude dance clubs, is laundering the proceeds of the conspiracy through "Runway 69." Miller alleged that the proceeds are used for such purposes as covering up the "Watergate scandal" and buying the "cooperation" of the NYC Police Department.

Based on his allegations, Miller asked for $49 million in damages as well as a myriad of court orders, such as one providing that "no President or officer of the United States of America has ever been authorized to order the death of any person without due process of war or law" and that "no executive order of the President can provide due process for assassinations."

[<page -2- of original | -3->]

In January 1994, all of the defendants moved to dismiss Miller's complaint. In a 28-page order the court granted each of the defendants' motions and dismissed all of Miller's claims pursuant to Fed. R. Civ. P. 12(b)(6). Miller appeals.

This Court has the "inherent authority, wholly aside from any statutory warrant, to dismiss an appeal . . . as frivolous when the appeal . . . presents no arguably meritorious issue for [its] consideration." Pillay v. INS, 45 F.3d 14, 17 (2d Cir. 1995). A case is deemed frivolous if it is "based on an indisputably meritless legal theory," or presents "clearly baseless" factual contentions. Neitzke v. Williams, 490 U.S. 319, 327 (1989). A finding of factual frivolousness is appropriate when the facts alleged "rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." Denton v. Hernandez, 504 U.S. 25, 26 (1992); see Neitzke,

490 U.S. at 328 (factual frivolous allegations include "claims describing fantastic or delusional scenarios").[2]

Because Miller's appeal is frivolous, we affirm the decision of the district court.

For the reasons set forth above, the judgment of the district court is hereby **AFFIRMED**.

[autograph signature of]
Thomas J. Meskill, U.S.C.J

[autograph signature of]
Dennis Jacobs, U.S.C.J

[autograph signature of]
Edward R. Korman, U.S.D.J

---

[2]This Court is free to affirm the district court on grounds not relied upon by district court. Alfaro Motors, Inc. v. Ward, 814 F.2d 883, 887 (2d Cir. 1987). A district court's dismissal of a claim under Rule 12(b)(6) is reviewed de novo. See Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996).

(2)

FILED

97 667 SEP 25 1997

Number

OFFICE OF THE CLERK

in the

Supreme Court of the United States

October 7, 1996, Term

Harry P. Miller,
Plaintiff-Petitioner,

against

Larry Silverstein et al.,
Defendants-Respondents,

on petition for writ of certiorari
to the United States Court of Appeals
for the Second Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

The lower Courts failed to address complaints of the petitioner but issued orders claiming assassination is a power vested in the Presidency or Congress of the United States of America; wherefore a writ of certiorari is compelled.

ORDER 93-CV-2871 (CBA)

with annotations

Harry P. Miller, pro se
Post Office Box 750074
Forest Hills NY 11375-0074
718-896-3037

- 44 pp

QUESTIONS PRESENTED

I Is the Presidency of the United States of America vested authority to assassinate: secretly order deaths of natural persons without process of war or law?

II Is the Congress of the United States of America vested authority to assassinate: secretly declare war?

III Is the Judiciary of the United States of America vested authority to sanction assassination: secretly promote murder by some process of law?

IV Was the matter of Miller v Silverstein properly removed from the Supreme Court of the State of New York County of Queens to the United States District Court Eastern District of New York by United States Attorney Zachary W. Carter?

V Was the matter of Miller v Silverstein properly heard by the United States Court of Appeals for the Second Circuit?

VI How many American soldiers abandoned in Southeast Asia, and how many children, grandchildren, wives and parents of American soldiers "returned to Hanoi," have died in the Socialist Republic of Vietnam since Miller v Silverstein was moved to the Federal courts?

VII a Did the courts address any of the complaints filed?

VII b Did any of the judges below understand the plaintiff's complaints?

VIII Did any of the judges below attempt to clarify matters they say they may have misapprehended?

IX Did the judges below behave competently?

X What happened to the initial presentation of this petition received in United States First Class Mail EXPRESS number EI865674241US in the office of the Clerk of the Supreme Court of the United States 25 September 1997?

XI Will any people have impunity to kill without due process of war or law?

PARTIES

Harry P. Miller, Plaintiff-Petitioner,
pro se 718-896-3037

Harry P. Miller
Post Office Box 750074
Forest Hills NY 11375; and

Larry Silverstein, deceased Defendant,
represented by 212-683-3800

Leon Mandel, Esq.
Dinkes & Morelli
112 Madison Ave.
New York NY 10016; and

New York City, Defendant-Respondent,
represented by 212-788-0874

Elizabeth I. Freedman, Esq.
Office of Corporation Counsel of the
City of New York
100 Church Street
New York NY 10007; and

WNBC TV Channel 4, Defendant Respondent,
represented by 212-664-4017

Lynn B. Oberlander, Esq.
NBC Legal Department
30 Rockefeller Plaza
New York NY 10112; and

H. Ross Perot, Defendant-Respondent,
represented by 516-747-0300

Loretta M. Gastwirth, Esq.
Metzer, Lippe, Goldstein, Wolf and Schlissel, P.C.
190 Willis Avenue
Mineola NY 11501; and

Richard M. Nixon, deceased Federal Defendant,
and
John W. Vessey, Federal Defendant-Respondent,
and
Colin L. Powell, Federal Defendant-Respondent,
and
William J. Clinton, Federal Defendant-Respondent,
represented by 212-514-2218

Hon. Seth P. Waxman
Acting Solicitor General of the United States
Room 5614
Department of Justice, attention Emily Spadoni
950 Pennsylvania Avenue, N.W.
Washington DC 20530-0001

Number
in the
Supreme Court of the United States
October 7, 1996, Term

Harry P. Miller,

Plaintiff-Petitioner,

against

Larry Silverstein et al.,

Defendants-Respondents.

On petition for writ of certiorari to the
United States Court of Appeals for the Second Circuit

Supplementary Appendix to Petition for Writ of Certiorari
TABLE OF CONTENTS

Questions presented		i-ii
Parties		iii-iv
Table of contents		v-vi
Order 93-CV-2871 November 5, 1996, United States District Court Eastern District of New York		1-38
Introduction		1
Background		1-5
Plaintiff's claims		6-11
Discussion		11-38
I.	Federal defendants	11-21
II	Defendant New York City	21-25

III.	Defendant H. Ross Perot	25-28
IV.	Defendant WNBC-TV	28-34
V.	Defendant Larry Silverstein	34-38
Conclusion		38

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

HARRY P. MILLER,

Plaintiff,

-against-

LARRY SILVERSTEIN, et al.

Defendants.

----------x

FILED
IN CLERK'S OFFICE
Not for publication

ORDER
93-CV-2871 (CBA)

AMON, U.S. DISTRICT JUDGE,

INTRODUCTION

Harry Miller is a Vietnam veteran on full disability for psychological reasons. He has submitted two pro se complaints[1] in this action against President Clinton, former President Nixon, Colin Powell, John W. Vessey, H. Ross Perot, the City of New York, WNBC Channel 4 television station, and Larry Silverstein, the alleged owner of "Runway 69", a Queens nightclub. Before the Court are the separate motions of each of the defendants to dismiss this action. For the reasons discussed below, their motions are granted and the complaints are dismissed.

BACKGROUND

Plaintiff details the following narrative in his complaints: When plaintiff was serving in Vietnam, President Nixon and other federal officers violated United States law and treaties by ordering assassinations and

[1]Plaintiff Harry Miller filed his first complaint in state court on or about April 30, 1993. The action was then removed to this Court. On or about July 2, 1993, plaintiff submitted an "Amended Complaint for Federal Venue" to this Court.

ordering recruitment of Vietnamese POWs as infantrymen in the United States armed forces. Plaintiff was one of the people ordered to recruit these Vietnamese POWs (Kit Carson Scouts),† and then to betray them.† Although the complaint is not clear on this point,† plaintiff seems to allege that he was also ordered to kill American POWs who he had been told were deserters.[A]

According to the plaintiff, these orders and betrayals were part of a scheme to cover up the United States government's involvement in a Laotian heroin trafficking operation. Apparently, an army photographer photographed a meeting[B] of members of the Royal Thai Army, members of the 151st Infantry, members of the Indiana National Guard, and pilots serving under U.S. Ambassador Sullivan regarding this operation. A copy of this photo is attached† to the

- - -

Comments of plaintiff under penalty of perjury:

†A fantasy of the order's author not in complaints.

Plaintiff was ordered only to deploy Kit Carson Scouts in combat as soldiers of the United States of America; recruitment of good soldiers captured by the plaintiff was only offered as an option.

[A]The complaints clearly state that plaintiff was ordered to murder specified U.S. citizens in the event that they managed to surrender to any of his patrol teams. He was ordered to thus betray American citizens; but the plaintiff was not himself ordered to betray the non-citizens who loyally served as American soldiers and have subsequently been betrayed by their commissioned officers on behalf of the President and Congress of the United States.

[B]The District Court was informed that a detachment of the Army Motion Picture Service produced motion picture films with interviews at the meeting during March, 1969, at and in the vicinity of Nha Trang and Hon Tre. The plaintiff was put in segments of those U.S. Army films. But no part of those official pictures were submitted with the complaints as falsely stated by author of the order.

complaint.[C] Plaintiff says that the money obtained from this drug trafficking was used to create "slush funds" for aiding U.S. Ambassor Sullivan's efforts abroad, for covering up Watergate,[†] and later for paying off the 112th precinct[†] and other precincts of the New York City Police Department.[†]

Plaintiff believes that the government is still trafficking in heroin and that Goldfingers International, a business that supplies nude dancers to nude dance clubs, is laundering the money from that operation through "Runway 69", a nude dance club in Queens. Tommy DeWitt runs this club and allows Goldfingers International to be there as his guest.[†] Larry Silverstein owns the property and rents it to Dewitt.[†]

- - -

Comments of plaintiff under penalty of perjury:

[C]A photograph of the plaintiff at the meeting surreptitiously made by another soldier incidentally present and published in *Vietnam* magazine was presented in evidence of the plaintiff's observation of the meeting. The picture was not taken for the U.S. Army. And the photographer was then unaware of the crimes mentioned in the order. But he is a surviving witness.

A second photograph presented in evidence, is actually from another Army Motion Picture Service film. It was falsely identified in the National Archives of the United States of America by the U.S. Army as photo of a patrol of Co. D, 151st Infantry, in combat at Dong Nai. The Sergeant in the picture and the Officer who directed the filming say they helped produce it at or very near Long Binh as a training film. They were not in combat. And the enemy soldiers falsely identified as prisoners in the rest of the National Archives deposit were employees of the U.S. Army.

[†]A fantasy of the order's author not in complaints.

Silverstein according to the amended complaint had been pretending to be an owner. DeWitt never pretended to be anything but agent for Goldfingers. Author is apparently preparing to claim confusion rather than malice.

Plaintiff claims that he was assaulted by employees or guests of Runway 69 on two occasions when he was surveying the club. According to plaintiff, the police aided the assailants in their escape. Plaintiff alleges that he was assaulted on the evening of April 14, 1993. He was filming activities at the club hoping to gather evidence to expose the money laundering operation. A dancer from the club, known as Margarita Russel, mistook[†] plaintiff for a protestor[2] and assaulted plaintiff by shoving plaintiff's camera in his face and breaking the viewfinder. Plaintiff then attempted to make a citizen's arrest. He followed Russel to her car[†] and told her fiancee, Vincent Tucci, that he would drop charges if they paid for the camera. At this point the woman "ordered[D]" Tucci to assault plaintiff. Tucci took plaintiff's camera, smashed it on the ground, then punched the plaintiff in the face. Police arrested Vincent Tucci[E] for criminal

---

[2]Local residents had been protesting at the club for weeks in an effort to force it out of the community.

\- - -

Comments of plaintiff under penalty of perjury:

[†]A fantasy of the order's author not in complaints.

[2]It was claimed Margarita had supplied her procurer to make a nonleathal assault on the plaintiff for her employer without knowing Goldfingers' intent was for Police Officers to murder both of them: killing the procurer to protect the plaintiff unfortunately killed by a stray round. The procurer took a look at the situation and backed out. More than a dozen of the protesters were there to testify the plaintiff obviously was neither a protester nor paparazzi. She then took the job herself. But the Police falsely charged the procurer for the assault relatively accurately described by the Hon. Amon in the following section of her order.

[D]He is much prettier than her. Perhaps the judge discovered she is his "fiancee-"pimp. But he was identified as the procurer in the complaints.

[E]The witnesses tried to tell the Police Officers

mischief. DeWitt then paid† the police with this slush fund money to ignore what they saw, to intimidate other witnesses to the incident, to lie in their affidavits, and to refuse all complaints against the dancer.

Plaintiff also claims in his amended complaint that after he initiated this suit, Secret Service Agent Jeffrey Wise, along with the New York City Police Department and President Clinton, interfered with service of process to defendants Nixon and Powell by confiscating their summons. Plaintiff claims that Wise, aided by the defendants in this case,[F] made threats against him and may have illegally entered his home and carried out an assault and battery on plaintiff's father. In his original complaint, plaintiff alleges that police officers forced their way into his home. Plaintiff claims this intrusion caused his brother to have conjunctive heart failure and upset his elderly father. Plaintiff also claims to have received two "nuisance calls" allegedly traced to Mr. Silverstein.[G]

- - -

Comments of plaintiff under penalty of perjury:

arresting Tucci that Margarita was the only one who had deliberately inflicted damaging blows. She had been pounding the plaintiff from behind while Tucci submitted to being restrained until the Police took custody. They filed perjured depositions of Police Officers who were not there; and the Police refused to accept complaints from the actual witnesses against Margarita. Charges against Tucci filed by District Attorney Brown were so blatantly flawed that the criminal charges were dismissed. Brown refused to file any charges against Margarita.

†A fantasy of the order's author not in complaints.

[F]Not in complaints but possibly not fantasy.

[G]The telephone company, now Bell Atlantic, traced three, not two, calls to Silverstein within six hours of second assault. Police refused to accept complaint from, then, NYNEX.

Plaintiff's Claims

Because plaintiff's complaints are in narrative form, the court is left to infer the exact claims plaintiff is making against each defendant. Due to plaintiff's pro se status, the Court with considerable effort has attempted to glean from plaintiff's separate complaints all of the claims he is making and against whom.

The original complaint alleges conspiracy by all defendants to deprive plaintiff, Kit Carson Scouts (defined as enemy POWs used as American soldiers), and American POWs of their constitutional rights under 42 U.S.C. § 1983.[H] Plaintiff claims that defendants betrayed the Vietnamese[†1] Kit Carson Scouts and American POWs in an effort to cover up their involvement in the heroin trafficking operation. Plaintiff also claims that Goldfingers International is laundering money from the operation as part of the conspiracy to traffic heroin. Employees of Goldfingers International and of Runway 69 have repeatedly assaulted him outside the club[†2] Plaintiff therefore sues Silverstein as

- - -

Comments of plaintiff under penalty of perjury:

[H]The order's author falsely claims complaints not in jurisdiction of the state court given the original complaint. The original complaint incidentally alleges crimes of the City whose agents and Police Officers assaulted and robbed the plaintiff on two occasions. The National Broadcasting Company, coconspirator in the crimes, broadcast libel against the plaintiff with lies about the injuries inflicted, probably also to help intimidate witnesses. H. Ross Perot and Federal codefendants were mentioned as coconspirators in the incidental crimes.

[†1]A fantasy of the order's author not in complaints.

Many if not most U.S. auxillaries in the Vietnam Conflict had been subjected to ethnic discrimination by officers of the North Vietnamese regime. Only some of them are Vietnamese.

[†2]A fantasy of the order's author. Assaults were **repeated** by plainclothes Police Officers.

owner and landlord of the property rented by Runway 69. In addition, he claims Silverstein and Goldfingers have refused to give him the names of their counsel and that as a result of plaintiff's persistent requests,†3 Mr. Silverstein made two "nuisance calls"[1] to plaintiff.

In connection with the operation at Runway 69, plaintiff also sues the City of New York because New York City Policemen allegedly aided in some of his assailants' escapes, broke into his home to intimidate him and his family, and took a "pay off"†4 to falsify reports regarding

- - -

Comments of plaintiff under penalty of perjury:

†3A fantasy of the order's author. He tried to anonymously telephone threat of further injury. Silverstein tried to play terrorist along with the Police Officers who made the botched second assault. But they did manage to steal some property in the second assault. The amended complaint points out that Silverstein only pretended to own the property to protect those with greater guilt.

[1]The telephone company said Silverstein made three "nuisance" calls to 718-896-3037 soon after the second assault during the same morning of 21 April 1993.

†4Complete fantasy of order's author. The plaintiff has never claimed any Police Officer was paid money to support infliction of injuries on the plaintiff. A few of them do profit on the drug trade. But most of them are so perverted they will support any depravity of another New York City Police Officer. They have been raised in a society that permits smooth talking military officers to betray soldiers such those whose families are suffering the effects of service in Desert Storm. The betrayal of American soldiers whose families have been "returned to Hanoi" is barely of interest. The situations in civil police departments are generally worse than in the military. New York City Police Officers intend to be retired, not before full retirement age, with full disability benefits by the good grace of their fellow Officers and nothing but contempt for taxpayers.

a separate assault at Runway 69.[J]

In addition to the aforementioned conspiracy, plaintiff sues[†5] the City of New York for another conspiracy by the New York City Police Department, the New York City District Attorneys, some politicians, some members of draft boards, and several New York judges. These people allegedly conspired to force criminals to volunteer for the draft during the Vietnam Conflict.

Plaintiff also claims that NBC has conspired by knowingly broadcasting lies regarding United States activities in Vietnam. For example, they suppress "the truth" about Kit Carson Scouts and American POWs abandoned in Vietnam and about members of the Senate Committee on POW/MIA Affairs who personally participated in the torture of enemy POWs. The Court assumes[K] that plaintiff is claiming that NBC fraudulently misrepresented facts to him and the general public. Plaintiff also claims that NBC knowingly and maliciously broadcasted lies about plaintiff

- - -

Comments of plaintiff under penalty of perjury:

[J]The second ¿separate? assault in view of Runway 69 was made **by** Police Officers.

[†5]Fantasy of the order's author. These are simply allegations of crimes incidental to injuries inflicted on the petitioner. The injuries caused by sending incompetent draftees to Vietnam were inflicted more than twenty years ago; and they were inflicted on many other people. The unrequited crimes do pose a present danger. Members of the 75th Regiment and of Fifth Special Forces Group were ordered to murder some of the illegally volunteered draftees. And soldiers sent on subsequent operations have been misused by officers whose incompetence was partly engendered by that behavior. The injuries still tryable were inflicted on others, not the plaintiff. And the plaintiff has not claimed otherwise.

[K]The Court never queried the plaintiff about any of its "assumptions."

and Vincent Tucci regarding Tucci's assault on plaintiff at Runway 69, which defamed both plaintiff and Tucci.

Plaintiff seeks $49,000,000 as relief in his first complaint.

In his second complaint, Plaintiff again claims that defendants violated the civil rights of Kit Carson Scouts and American POWs. It seems that plaintiff may also be claiming that his federal rights have been violated because United States officers forced him to break federal laws while in Vietnam.†

The second complaint also alleges that the New York City Police Department, the New York City District Attorney, and some Secret Service Agents have more recently violated plaintiff's civil rights.└ The City of New York conspired with Secret Service Agent Jeffrey Wise and President Clinton to interfere with service of process on defendants Nixon and Powell. Wise, as part of a conspiracy with all the defendants in this case, made threats against plaintiff and illegally entered plaintiff's home and assaulted and battered his father.†6

Plaintiff sues Ross Perot for pretending to act for plaintiff's "comrades in arms" when he was really in collusion with the government to betray American POWs.

Plaintiff sues every defendant on every claim enumerated in the second complaint because every defendant is allegedly an accomplice to every crime and because the defendants conspired to deprive him of his federal rights

\- - -

Comments of plaintiff under penalty of perjury:

†Complete fantasy of order's author.

└Not in complaints of Miller v Silverstein et al. but in Miller v Clinton et al., 96-CV-776 (CBA) United States District Court Eastern District of New York. CBA signed this order. Ignorance pretended in the order is inexcusable.

†6Neither of these two conspiracies were alleged by the plaintiff. Can they be proved complete fantasies of the order's author?

through their alleged actions.[M]

Plaintiff's second complaint requests[N] that the Court declare 1) that no president of other United States officer has the right to order the death of any person who has not received due process of law even during a time of war; 2) that no executive order can provide due process for assassinations; 3) that killings by U.S. agents must be publicly reported; 4) that any person who does not report such killings is an accessory to murder; and 5) that people charged as criminals by a foreign power are classified as enemy-held POWs or MIAs. Plaintiff also requests that the Court order the president and the Joint Chiefs of Staff: 1) to complete a roster of Vietnamese POWs who served in the U.S. armed forces in Vietnam and give it to the Red Cross; 2) to declare all Kit Carson Scouts as residents of the United States, as American soldiers missing in action, or as discharged, deceased members of the U.S. armed forces; and 3) to declare every American soldier accused of desertion as an enemy-held POW. Finally, plaintiff requests that the Court order all members of Congress who serve on committees regarding POWs MIAs, or the Vietnam conflict,

- - -

Comments of plaintiff under penalty of perjury:

[M]Author of the order falsely claims the complaint alleges knowledge of conspiracy in every wrong against the petitioner. Each defendant is individually charged with deliberately contributing to each and all of the injuries in various ways for their own reasons, only occasionally by conspiracies.

[N]Except possibly for the second, third, fourth and ninth, the nine following petitions supposed to be from the complaint become increasingly and obviously deliberately garbled in this order. And they become a "myriad of court orders" in Summary Order 96-6303 of the United States Court of Appeals for the Second Circuit truly transcribed at page 14 of the *Petition for Writ of Certiorari*. Both orders are insufferable.

to file a public report on any personal involvement with POWs.

DISCUSSION

For the sake of clarity, the Court will discuss the particular claims plaintiff makes as to each defendant in the appropriate section dealing with that defendant's motion to dismiss. The Court notes at this point that plaintiff also charges each defendant with engaging in conspiracy with all of the other defendants to deprive him, American POWs, enemy POWs, and MIAs of their civil rights. Despite the obviously delusional nature of some of plaintiff's claims,[O] the Court will nonetheless seek to apply applicable legal standards to address them.

I. Federal Defendants[3]

Plaintiff brings claims against the federal defendants for their direct and/or accessorial involvement in the heroin trafficking scheme and its cover up, including ordering assassinations in Vietnam[P] and falsely accusing American soldiers of desertion.

The federal defendants seek to dismiss plaintiff's claims against them for failure to state a claim upon which relief may be granted pursuant to Rule 12(b) (6) of the Rules of Civil Procedure. They assert that the plaintiff's claims do not present a justiciable case or controversy. The defendants argue: 1) that plaintiff lacks standing to bring these claims;

---

[3]This opinion will refer to defendants William J. Clinton, Richard M. Nixon, Colin L. Powell and John W. Vessey as the "federal defendants."

- - -

Comments of plaintiff under penalty of perjury:

[O]This psychiactric expert's assessement of what laymen should recognize as specific obviously delusional claims unfortunately are not indicated by the following text.

[P]The petitioner was allegedly voluntered to report on the assassinations because the assassins started realizing the

and 2) that plaintiff's allegations present non-justiciable political questions concerning the discretionary conduct of the executive branch of the United States government.[4]

Justiciability is a "'threshold' question" and is a proper justification for dismissal of a complaint. Hoang Ngoc Can v. United States, 14 F.3d 160, 162 n.1 (2d Cir. 1994) (citing United States v. Sperry Corp., 493 U.S. 52, 66 (1989); Bi v. Union Carbide Chemicals and Plastics Co., 984 F.2d 582 (2d Cir.) (affirming dismissal of complaints on basis of standing), cert. denied, 510 U.S. 862 (1993)). Justiciability includes among other things, the requirement of standing and the prohibition of adjudication of political questions. See, e.g., Flast v. Cohen, 392 U.S. 83, 95 (1968); see also Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 215 (1947).

The Court finds that, with respect to plaintiff's claims against the federal defendants, plaintiff lacks standing. In Allen v. Wright, 468 U.S. 737, 751 (1984), the Supreme Court noted that:

> "[the] [s]tanding doctrine embraces several judiciallyself-imposed limits on the exercise of federal jurisdiction, such as the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches,and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law in-voked.... A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlaw-ful conduct and likely to be redressed by the requested relief.... The alleged injury, for example, must be distinct and palpable."

Id. at 751.

---

[4]In a footnote, the federal defendants also state, citing Butz v. Economou, 438 U.S. 478 (1978), that the complaint should be dismissed to the extent that it seeks relief from

More specifically, standing requires that the plaintiff show that: 1) he "'personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant'"; 2) the injury "'fairly can be traced to the challenged action'"; and 3) "'the injury is likely to be redressed by a favorable decision.'" Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982) (internal citations omitted); see also Able v. United States, 88 F.3d 1280, 1291 (2d Cir. 1996) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61) (1992)) [sic.].

The complaints allege no injury to plaintiff caused by the federal defendants' "conspiracy" or individual acts; rather plaintiff seeks relief for American POWs, MIAs and Kit Carson Scouts. Plaintiff alleges that "[t]he Defendants, the City of New York, Perot, Nixon, Vessey, Powell and Carter [sic.], direct conspiracies to deprive the 'deserters' of their rights as American citizens and as POWs. The other defendants are accessories ...." 2d Comp. at ¶83. At a minimum, plaintiff must "show he *personally* has suffered some actual or threatened injury." Valley Forge, 454 U.S. at

---

them in their individual capacities[Q] and because they are entitled to either absolute or qualified immunity. Although the Court need not reach this issue, it should be noted that the President of the United States has absolute immunity against civil suits arising out of his "official acts.[R]" Nixon v. Fitzgerald, 457 U.S. 731 (1982).

- - -

Comments of plaintiff under penalty of perjury:

Federal secret homicide program was out of hand when they were ordered to murder U.S. citizens investigating the Kennedy, Ruby and Oswald assassinations in the United States. HPM

[Q]None has lawful capacity to assassinate.

[R]Assassinations were not, prior to issue of this order, official acts of the United States of America.

471 (emphasis added). Plaintiff's claims regarding conspiracies to deprive various parties of their rights include no allegations of personal injury to plaintiff himself.[5]

In addition, defendants correctly point out that the plaintiff does not have standing on these claims as a taxpayer or as a citizen of the United States. See Valley Forge, 454 U.S. at 476-86; Schlesinger, 418 U.S. at 221-22. Defendants also assert that plaintiff may not meet the standing requirement by alleging that he has vicariously suffered emotional distress, citing Pietsch v. Bush, 755 F. Supp. 62, 66 (E.D.N.Y.), aff'd, 935 F.2d 1278, cert. denied, 502 U.S. 914 (1991).[6]

---

[5]The general prohibition on third-party standing prohibits plaintiff from raising the legal rights of third parties. See e.g., Warth v. Seldin, 422 U.S. 490, 499 (1975). Although an exception to this prohibition permits plaintiffs to raise the rights of third parties if there are substantial obstacles preventing the third parties from asserting their own rights, see Barrows v. Jackson, 346 U.S. 249 (1953), the third party standing doctrine is inapplicable here because, even in the third party standing context, the plaintiff himself "must meet the constitutional standing requirements of injury, causation, and redressability." See id. at 255-56.

[6]Although the federal defendants do not address the possible claim that plaintiff was ordered by members of the government to break the law against his will, in light of the plaintiff's pro se status, the Court will. Assuming that plaintiff is alleging that he suffered mental distress as a result of these actions (plaintiff never directly states this claim and

- - -

Comments of plaintiff under penalty of perjury:

[5]Situation of the federal defendants' victims, and of third party loyal Americans is comparable to that of victims of the Nazi holocaust, and of third party good Germans. Federal defendants' victims, were subordinates or were cohorts dependent on the petitioner's suppressed reports.

---

may not be presenting it for review), the Court finds that such a claim is non-justiciable. Plaintiff does not present a "distinct and palpable" injury. Allen, 468 U.S. at 751; Pietsch, 755 F. Supp. at 66 ("The plaintiff's contention that he is being made 'an accessory to murder against his will,' and, ... that this fact is causing him severe emotional distress, is too abstract to amount to a 'case or controversy' under Article III, Section 2.".) Although the plaintiff in Pietsch, who was presenting claims regarding the Gulf War although he was not himself in the armed forces, arguably presented more abstract injuries than those presented by the plaintiff in this case, the Court nevertheless finds that plaintiff Miller has not alleged sufficient facts to indicate a "distinct and palpable injury" that would give rise to standing. Plaintiff has not presented any allegations of emotional distress.

In addition, plaintiff makes several allegations concerning criminal entry into his home to which all "[d]efendants are accessories."[5] In his first complaint, he alleges that the police "forced their way into [his] home, caused his brother to suffer conjunctive hart failure and be unable to go to work, and upset his senile father." His second complaint refers to a criminal entry into his home and an assault and battery against his father in the course of this entry [sic.].

The Court notes that plaintiff's claim of a criminal

- - -

Comments of plaintiff under penalty of perjury:

Injury of the petitioner's agents and betrayal of his agency are personal, not vicarious, injuries to the plaintiff.

[4]Plaintiff specifically denied, in response to federal defendants' motion, that he filed as a taxpayer or citizen.

[5]The only defendants involved in these incidents according to the complaints were principal of the Police Officers, New York City and Commander in Chief of the

Even if plaintiff had standing to assert his claims against the federal defendants, the Court would dismiss these claims because they raise non-justiciable political questions of the legislative and executive branches in the realm of foreign affairs and the military. The political doctrine arises from the doctrine of separation of powers. See, e.g., Baker v.

---

entry into his home would most likely meet the threshold requirement of standing. However, plaintiff has not named Agent Wise as a defendant in this action.[T] To the extent that plaintiff alleges that the federal defendants are accessories to this conduct, plaintiff does not put forth sufficient facts to sustain these allegations. The Second Circuit has held that, when alleging a conspiracy to violate civil rights, "[c]onclusory allegations[U] of conspiracy ... are insufficient to survive a motion to dismiss under Rule 12(b) (6)." Sykes v. James, 13 F.3d 515, 521 (1993), cert. denied, 114 S. Ct. 2749 (1994). Reliance on "vague, prolix allegations of a conspiracy without pleading any overt acts or providing a basis of a conspiracy without pleading any overt acts or providing a basis in fact for [the] claim" is insufficient. Polur v. Raffe, 912 F.2d 52, 56 (1990), cert. denied, 499 U.S. 937 (1991).

- - -

Comments of plaintiff under penalty of perjury:

Secret Service, Clinton. Each of those defendants knows what its agents did, or what is formally alleged **in the order**; and each signifies approval by failure to censure its agent or deny the allegation.

[T]Clinton will be sued for each of his agent's acts.

[U]There is no conclusion in the complaints that Wise broke in, nor has Wise been accused threatening anyone other than the plaintiff's process server. It is not alleged that he actually carried out threat of assault against the petitioner's ninety year old father. But it was complained that he made threats to the process server. Trial of evidence and witnesses are replaced by the author's fantasys in this order.

Carr, 369 U.S. 186, 210 (1962). In Baker, the Supreme Court summarized the factors that lead to a finding of non-justiciability[v] on political grounds as follows:

> a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. at 217

Plaintiff's claims involve a number of the factors mentioned in Baker v. Carr. First, plaintiff's requested judicial proclamation as to the status of POWs and Kit Carson Scouts would directly interfere with a determination

- - -

Comments of plaintiff under penalty of perjury:

[v]The amended complaint in part is that, during an attempt to murder the petitioner and more than ten other American soldiers who survive to testify, one American soldier while rendering exemplary service in line of battle for the United States of America was successfully assassinated by his own Officers in presence of the other soldiers. The federal defendants' motion claimed only that the executive branch is not accountable for that and other assassinations. The order here effectively says all the assassinations alleged by the petitioner are sanctioned by the legislative branch. The Federal Court has not only failed to try the evidence but prolixly claims that to look at evidence of murder that may have been sanctioned by Congress is not allowable: it is vested authority to sanction assassinations! The Federal

more properly made by the legislature[W] or executive . The Constitution expressly vests the power of foreign affairs, including decisions about war, in the executive and legislative branches,[X] Oetjen v. Central Leather Co., 246 U.S. 297, 302 (1918), and vests control of the military in the President. U.S. Const. art. II, § 2, cl. 1. Although the Court noted in Baker that "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance," many of these cases are indeed political questions because they "turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature."[Y] Baker, 369 U.S. at 210. Second, plaintiff's requested order that members of Congress publicly report their personal involvement with POWs would show a lack of respect to the legislative branch. Third, plaintiff's requested order that the

- - -

Comments of plaintiff under penalty of perjury:

report on this victim's fatal wound has been crudely altered more than once, providing additional evidence of culpability realized by the assassins' Commanders in Chief from Nixon through Clinton.

[W]The order pretends to determine that the U.S. Congress is jointly responsible for betrayal of abandoned American soldiers and of their families "returned to Hanoi" with the U.S. State Department's promise of "special consideration" for them in Vietnam.

[X]If this order was intended to mean anything it is claiming Members of Congress exercised authority to direct secret war against its Federally assassinated constituents. Does Congress or the President secretly establish the U.S. citizens are no longer citizens when their lives become politically inexpedient?

[Y]No articles or amendments of the U.S. Constitution vest power to assassinate in the executive or legislature, nor in the judicial branch.

President and Joint Chiefs of Staff declare the status of POWs and Kit Carson Scouts according to a judicial determination would interfere with the discretionary decisions of the executive branch regarding foreign affairs and the United States military. See Hoang Ngoc Can, 14 F.3d at 163; Smith v. Reagan, 844 F.2d 195, 198-200 (4th Cir.), cert. denied, 488 U.S. 954 (1988); see generally Dames and Moore v. Reagan, 453 U.S. 654 (1981); U.S. v. Curtiss-Wright Export Corp., 299 U.S. 304, 319 (1936).[7] Fourth, by determining the status of American soldiers and enemy POWs, the judiciary would be making policy decisions far outside judicial discretion. Finally, there are no discoverable or manageable standards for resolving these issues. Thus, plaintiff's claims and his requested relief as to the federal defendants are non-justiciable political questions that this Court would not review even if plaintiff had standing. See Smith, 844 F.2d at 198-200 (plaintiff seeking recognition of POWs and order that President comply with Hostage Act was a non-justiciable political question).

Plaintiff's claim that the federal defendants conspired with all other defendants to deprive him, POWs, and MIAs of their civil rights must be dismissed as insufficiently specific.[4]

---

[7] Although criminal misconduct by the executive is reviewable under certain circumstances, see e.g. United States v. Nixon, 418 U.S. 683 (1974), the U.S. Attorney General and independent counsel are responsible for prosecuting the president or his generals, not Plaintiff Miller. See, e.g., Morrison v. Olson, 487 U.S. 654-55 (1988).

- - -

Comments of plaintiff under penalty of perjury:

[4]Reports of long range patrols of Second Field Force in the Vietnam Conflict have been falsified. Evidence was presented to the Court. Specifically, in 1969 members of Co. D, 151 Inf., and a camera operator of the Army Motion Picture Service were told they were making a training film under direction of Lt. James Johnson. Still pictures taken

Sykes v. James, 13 F.3d 515, 521 (2d Cir. 1993) (conclusory allegations insufficient to survive motion to dismiss), cert. denied, 114 S. Ct. 2749 (1994); Polur v. Raffe, 912 F2d 52, 56 (1990) (reliance on "vague, prolix allegations of a conspiracy without pleading any overt acts or providing a basis in fact for [the] claim" insufficient), cert. denied, 499

- - -

Comments of plaintiff under penalty of perjury:

from the film were falsely deposited as combat photography in the National Archives of the United States with an elaborate narrative description of falsified combat operations. They replaced actual reports of operations during which U.S. citizens were assassinated and reports on enemy held American POWs suppressed or falsified as experienced in Co. D, 151st Infantry, by the Sergeants in the film.

The original petition was lost by the Supreme Court of the United States soon after its delivery to the Office of the Clerk 25 September. On the day the amended petition was delivered to the Supreme Court of the United States, 10 October 1997, the National History Museum of the United States, in the District of Columbia, was displaying the Company's actual (unauthorized) shoulder patch with POW/MIA buttons. And that day the Clerk then required typesetting of the order delivered 25 September. A contract was made with Lutz Appellate Services, Inc., for delivery of the typeset books 14 September 1997; but on 13 September they notified the petitioner that Lutz prefers not to print the order. In the meantime children of American soldiers receive special consideration in Vietnam, but from the Socialist Republic of Vietnam rather than as promised by the U.S. State Department when they were forcibly "returned to Hanoi".

Most of the U.S. citizens in the falsified official combat photography are available to testify about actual long range patrols of Second Field Force as well as the hoax. The POWs in the film have been betrayed as the surviving U.S. citizens will testify.

U.S. 937 (1991); see also Ostrer v. Aronwald, 567 F.2d 551, 553 (2d Cir. 1977) ("[C]omplaints containing only 'conclusory,' 'vague,' or 'general allegations' of a conspiracy to deprive a person of constitutional rights will be dismissed. Diffuse and expansive allegations are insufficient, unless amplified by specific instances of misconduct.") (internal citations omitted); Chodos v. Federal Bureau of Investigation, 559 F. Supp. 69, 72 (S.D.N.Y.), aff'd, 697 F.2d 289 (2d Cir. 1982), cert. denied, 459 U.S. 1111 (1983). Because plaintiff has failed to meet these requirements, plaintiff's allegations of conspiracy on the part of the federal defendants must be dismissed.

II. Defendant New York City

Plaintiff sues the City of New York for the misfeasances and nonfeasance of police officers and district attorneys. He also sues the City for conspiring to deprive criminals who were forced into military service of their civil rights.

The City moves for dismissal of the action for failure to state a claim upon which relief may be granted. Fed.R. Civ.P. Rule 12(b) (6). Defendant argues that: 1) the claims are not pled with sufficient specificity; 2) the claims do not arise from a custom, policy or practice of the City of New York; and 3) police officers cannot be held liable for their failure to protect plaintiff from assault.

Before discussing the defendant's arguments, it should be noted again that plaintiff has no standing to bring claims in the name of POWs, MIAs, or criminals forced to enlist in the army. Therefore, only those claims which involve an alleged injury to plaintiff will be addressed.

Defendants are correct in stating that many of plaintiff's claims are pled with insufficient specificity. Plaintiff brings claims against the City of New York for its involvement in a conspiracy to force criminals to serve as soldiers in Vietnam. The City is also implicated in the conspiracy to deprive POWs, MIAs, and the plaintiff of their civil rights. As discussed, see supra, plaintiff lacks standing to bring

such claims on behalf of others. In addition, plaintiff's complaints are not sufficient to state a claim for these conspiracies. A claim of conspiracy under the civil rights statutes requires more than conclusory allegations; it requires pleading overt acts that contribute to the conspiracy and a basis in fact for the claim. Sykes, 13 F.3d at 521; Polur, 912 F.2d at 52; Ostrer, 567 F.2d 551; Chodos, 559 F. Supp. at 72. Plaintiff does not plead any overt acts by the City of New York or its agents that contributed to the conspiracy to deprive him of his constitutional rights. His allegations are vague and conclusory and thus do not have the required specificity for a valid claim of conspiracy. See Sykes, 13 F.3d at 521; Polur, 912 F.2d at 52; Ostrer, 567 F.2d 551; Chodos, 559 F.Supp at 72.

Plaintiff makes allegations against the City of New York regarding a conspiracy involving the City, Runway 69, and NBC. Again, plaintiff's complaints contain nothing more than conclusory allegations, which are insufficient to survive a motion to dismiss under Rule 12(b) (6). See Sykes, 13 F.3d at 521; Polur, 912 F.2d at 52; Ostrer, 567 F.2d 551; Chodos, 559 F.Supp. at 72.

Plaintiff further claims that the police deprived him of his constitutional rights by helping two of his assailants escape,[†7] refusing to allow him to file a complaint against

- - -

Comments of plaintiff under penalty of perjury:

[†7]Fantasy of order's author. The original complaint said the uniformed Police Officers helped **three** assailants escape. "About 1:30 a.m. 21 April 1993 ... at 70th Avenue & Austin, Forest Hills NY 11375. .... [with] Miller's personal property ... in the automobile whose license plate number was reported through telephone number 911 by Miller. The police checked the car and found the stolen property; but they made no arrests or recovery." The complaint did not report the assailants are Police Officers but were in plainclothes for the attack. Witnesses and evidence are deliberately suppressed by the Federal District Court.

Margarita Russel whom he claims assaulted him in their presence, falsifying the report regarding that assault, and breaking into his home to intimidate him into silence. A municipal defendant cannot be held liable under § 1983 unless the violations resulted from a custom, policy, or practice of the municipal subdivision.[AA] See Monell v. Department of Social Service of the City of New York, 436 U.S. 658, 694 (1978); Powell v. Gardner, 891 F.2d 1039, 1045 (2d Cir. 1989). A municipality may be held liable for violations of civil rights caused by a "policy statement, ordinance, regulation, or decision" of the municipality. Monell, 436 U.S. at 690. "[T]o hold a city liable under § 1983 for the unconstitutional actions of its employees, a plaintiff is required to plead and prove three elements: 1) an official policy or custom that 2) causes the plaintiff to be subjected to 3) a denial of a constitutional right." Batista v. Rodriguez, 702 F.2d 393, 397 (2d Cir. 1987) (granting directed verdict).

Plaintiff has failed to plead a municipal policy or custom that violated his civil rights. He has not even alleged that a municipal policy or custom existed. The only statements by the plaintiff that could imply the existence of a municipal policy or custom are the statements regarding the City of New York's involvement in the aforementioned conspiracies. These allegations, as stated above, do not include any overt acts by City officials and are overly vague

- - -

Comments of plaintiff under penalty of perjury:

[AA]Notorious policy and practice of the New York City Police Department (NYPD) is to refuse to accept most complaints that cannot be **easily** resolved by the police. Successful NYPD cases are routinely resolved by fabricating credible but false official reports. Russel's "fiancee" was let off the hook by filing **obviously** perjured affidavits, a less common but standing procedure of the NYPD. State and Municipal judges notoriously treat obvious perjuries of Police Officers as understandable misunderstandings.

and conclusory. See supra. The conspiracy claims are thus insufficient to present a municipal policy or custom.

Plaintiff also fails to allege that the police officers' actions or inaction resulted from a custom, policy, or practice of the City of New York.[8] He presents only isolated incidents of police misfeasance, making no connection to the department as a whole or to any officers at the policymaking level.

All of plaintiff's claims against the municipality are dismissed.[9]

---

[8]To the extent that plaintiff brings suit against the City of New York for the conduct of a district attorney, such a claim would be barred by the Eleventh Amendment. A suit against a district attorney acting in his official capacity constitutes a suit against the state. See Ying Jing Gan v. City of New York, 996 F.2d 522 (2d Cir. 1993). "When prosecuting a criminal matter, a district attorney in New York State acting in a quasi-judicial capacity, represents the State not the county." Id. (quoting Baez v. Hennessy, 853 F2d 73, 77 (2d Cir. 1988)) [sic.]. The Eleventh Amendment bars federal courts from hearing suits brought by private parties against a state.

[9]To the extent the plaintiff is claiming that City police officers failed to protect him from physical assaults by Russel and Tucci, defendants correctly point out that "a State's failure to protect an individual against private violence simply does not constitute a [constitutional violation]." DeShaney v. Winnebago County Department of Social Services, 489 F2d 189, 197 (1989). In Dwares v. City of New York, 985 F.2d 94, 98 (2d Cir. 1993), the court noted that state actors could be subject to liability for actions physically undertaken by private individuals if the state actor had "directed or aided or abetted" the action. Even if plaintiff's complaint was read to allege that the police officers aided or abetted the assault, the plaintiff to hold the City accountable must still show that the actions of the

III. Defendant H. Ross Perot

Plaintiff sues Ross Perot for pretending to act for his "comrades in arms" when he was really in collusion with the government to betray American POWs.[AB]

---

police officers were the result of municipal custom or policy, which he has failed to do. See supra.

- - -

Comments of plaintiff under penalty of perjury:

[AB]In June, 1997, H. Ross Perot and Col. R. A. Jones, (U.S. Army Retired) claimed to be completing the last U.S. operation of the Vietnam Conflict by bringing less than a hundred "Vietnamese Boat People" to San Francisco from Hong Kong. They were falsely represented as the only families of American soldiers who had currently been in the refugee camps. Hundreds of American auxiliaries and their families had been, and subsequently were "returned to Hanoi" with the U.S. State Department's promise of special consideration for them in Vietnam from the U.S. government. See the *Petition for Writ of Certiorari* and its APPENDIX. The private deceitful U.S. diplomacy was cited in the appellate Court and therein ignored. The "special consideration" has not been arranged by the U.S. but the Socialist Republic of Vietnam is providing very special consideration for those witnesses to falsification of U.S. records on its enemy held American POWs. Some of the gentlemen by act of Congress who betrayed the American soldiers and their families, Gen. Singlaub et al., have been negotiating for commercial concessions in Vietnam. And their clients are profiting on Vietnamese laborers who do not receive cost of living wages. The returned refugees, identified American Partisans, are used as examples of what will happen to slave laborers who get out of line.

One of the corporations profiting on the slave labor and money laundering, has delayed presentation of the petition for writ of certiorari by suing the petitioner in Amex v. Miller, 97Q2290 at Kew Gardens, New York.

Perot moves to dismiss the complaint for lack of standing, lack of subject matter jurisdiction, lack of in personam jurisdiction, improper service of process, failure to state a claim upon which relief may be granted, and because the claims are barred by the statute of limitations. Perot argues that plaintiff has not alleged any injury to himself caused by Perot and that the plaintiff has not pled facts that support the elements of a conspiracy or any other claim. As stated above, plaintiff has not alleged any injury to himself caused by Perot and that plaintiff has not pled facts that support the elements of a conspiracy or any other claim. As stated above, plaintiff does not have standing to bring claims for POWs or MIAs or to bring any claims where plaintiff has not been injured. He must allege or imply injury to himself.

Plaintiff's claims of conspiracy are insufficient as to Perot for the same reasons that they fail as against the City. See supra. Plaintiff's claims against Perot contain only conclusory allegations of conspiracy. See Sykes, 13 F.2d at 52; Ostrer, 567 F.2d 551; Chodos, 559 F.Supp. at 72. All conspiracy claims against Perot are dismissed pursuant to Rule 12(b) (6).

Plaintiff's only statement regarding Perot other than including him in all the conspiracies, is as follows:

> Perot, began according to popular opinion to illegally negotiate with the Socialist Republic of Vietnam, and to be an ombudsman on behalf of American POWs and soldiers, sailors or airmen of the US armed forces missing in action (MIA) He has injured the plaintiff by falsely pretending to act for plaintiff's comrades in arms

2d Comp. at 10

Thus, after dismissing the conspiracy claims and claims brought for other people, plaintiff's only remaining cognizable claim against Perot is a possible claim of fraudulent misrepresentation, he has failed to allege that he relied on Perot's misrepresentation or that the misrepresentation injured him in any way. He therefore fails to state a claim

upon which relief can be granted. See Spilky v. Helphand, 1993 WL 159944, *12 (S.D.N.Y. May 11, 1993) (dismissing claims of fraudulent misrepresentation for failure to state a claim pursuant to Rule 12(b) (6)); Sanders v. Thrall Car Mfg. Co., 582 F.Supp. 945, 969 (S.D.N.Y. 1983) (New York law requires justifiable reliance for claim of misrepresentation), aff'd, 730 F.2d 910 (2d Cir. 1984). Plaintiff simply concludes that Perot injured him without alleging any facts to support his conclusion. Also, without a distinct and palpable injury, plaintiff has no standing to bring this claim because without injury, there is no "case or controversy." Accordingly, the claims against Perot should be dismissed for lack of standing and failure to state a claim.

Alternatively, some of plaintiff's claims are also time-barred and should be dismissed because relief may not be granted regardless of whether he has stated a claim. In New York the statute of limitations for §1983 actions is three years. Owens v. Okure, 488 U.S. 235, 249-50 (1989). Aside from alleging that Perot is involved in the ongoing conspiracy to deprive plaintiff of his civil rights, the complaints describe only Perot's actions during the Vietnam conflict.† In fact, the Second Complaint alleges that Perot's actions with respect to POWs and MIAs began "[b]efore of by the time of the Presidency of George Bush." 2d Comp. at paragraph 89. To the extent that these events or actions occurred more than three years before plaintiff commenced this action (May 1993), they are barred from the statute of limitations and should be dismissed.[10]

---

[10]Although the Court need not reach the issue because plaintiff's claims are dismissed on other grounds, the Court agrees with defendant Perot that plaintiff fails to set forth a prima facie basis for this Court's assertion of personal jurisdiction over Perot, who is a citizen and resident of Texas

- - -

Comments of plaintiff under penalty of perjury:

†A fantasy of the order's author not in complaints.

IV. Defendant WNBC-TV

Plaintiff sues WNBC-TV for knowlingly publishing false information regarding the Tucci incident and for its resultant libel of plaintiff. He also claims that WNBC-TV would not allow him to see the video tape which allegedly falsely defames the plaintiff as the individual who insulted Tucci's fiancee.[†9] Plaintiff also sues WNBC-TV for publishing false reports of U.S. activities in Vietnam and for falsely verifying credentials of experts as part of the conspiracy to cover up the heroin trafficking scheme.

WNBC-TV moves to dismiss for failure to state a cause of action upon which relief may be granted. Fed.R. Civ.P. Rule 12(b) (6). Defendant argues that plaintiff failed to state the elements of conspiracy and failed to plead the claim with sufficient specificity.

With respect to defendant WNBC-TV, plaintiff's complaints contain only conclusory allegations and fail to plead overt acts or provide a basis in fact for the claims. Sykes, 13 F.d. at 521; Polur, 912 F.2d at 52; Ostrer, 567 F.2d 551; Chodos, 559 F.Supp. at 72. The claims of conspiracy against WNBC-TV are therefore dismissed for

---

and was not served in New York.[†8]

- - -

Comments of plaintiff under penalty of perjury:

[†8]A fantasy of the order's author in contradiction to the record. Perot was served in Texas and also at one of his places of business in New York where he arranged election of the last two Democratic Presidents.

[†9]A fantasy of the order's author. The videotape broadcast by NBC is itself an item of sale to the general public. The petitioner purchased it while filing the original complaint. But the Court did not allow it to be seen in evidence. Only the broadcast has alleged the petitioner insulted Tucci's fiancee during the incident. Many witnesses know the libel is constituted of a lie still deliberately maintained by the broadcaster and producer.

failure to state a claim.

Plaintiff's claim of fraudulent misrepresentation regarding POWs and MIAs during the Vietnam Conflict should likewise be dismissed for lack of standing for the same reasons discussed above.[11] See supra.

Plaintiff also fails to plead or imply all of the necessary elements for a claim of defamation.[12] He claims that NBC-TV knowingly broadcasted false statements about him regarding the incident outside Runway 69. The statements allegedly occurred on the Donahue Show and consisted of the following:

> "I've only seen one person [the Plaintiff: the person speaking for 'Goldfingers International' was videotaped by several Television cameramen at 'Runway 69,[']AC and obviously excluded those videotapers from her specific intention for this lie for broadcast] with the video camera [at 'Runway69'] and they insulted one of the dancers who put her hand in front of the camera and uh it was not a nice thing."AD

---

[11]This claim should also be dismissed because plaintiff fails to allege that he relied to his detriment on the statements made by WNBC-TV. Moreover, this claim is barred by the statute of limitations.

[12]In his amended complaint, plaintiff appears to allege that both he and Tucci were defamed by WNBC-TV. Plaintiff has no standing to bring a claim for the defamation of Vincent Tucci.

- - -

Comments of plaintiff under penalty of perjury:

ACBut the libeler was never videotaped by the petitioner.

ADAnd the libeler was not present to witness the incident she had been ordered to falsely describe during production of the *Donahue Show*.

Plaintiff appears to be saying that the representative of Goldfinger's International that spoke on the Donahue Show said that she saw only one person with a video camera at Runway 69,[AE] that this person insulted the dancer who put her hand in front of his camera[AF] That this person insulted the dancer who put her hand in front of the camera, and that it was "not a nice thing." Plaintiff alleges that all defendants were accessories to this libel.[AG]

Plaintiff is claiming that these statements are false and that WNBV-TV knew they were false when broadcasted because WNBC-TV had his tape of the incident, which, according to plaintiff, proved that Russel provoked the altercation and that he never insulted her. Giving the plaintiff every benefit of the doubt, he appears to be complaining that the broadcast did not explain: (1) that he was not the only cameraman at the scene; (2) that it was Russel who provoked the tussle; and that (3) he never insulted Russel.

There are generally four elements required to establish a claim of defamation (or libel[13]): (1) "a false and

---

[13]A claim regarding an allegedly defamatory statement broadcast on television is properly characterized as

- - -

Comments of plaintiff under penalty of perjury:

[AE]The representative of Goldfinger's International had previously seen many people with video cameras at Runway 69. She always put on a show for them. Most of them videotaped her; but not the petitioner. And she did not see the petitioner during the incident.

[AF]Subject of her *Donahue* interview was the incident between "Margarita" and the petitioner. But the interviewee was not there. And Donahue's producer knew this. And NBC's attorneys of record know this.

[AG]The author of the order is accessory to this libel and accessory to its ultimate intent. It has deprived the petitioner of protection of law; and betrayed many others.

defamatory statement of and concerning plaintiff"; (2) "publication to a third-party"; (3) the "requisite degree of fault"; and (4) "special harm or per se actionability." Weinstein v. Friedman, 1996 WL 137313, *10 (S.D.N.Y. Mar. 26, 1996); Box Tree South, Ltd. v. Bitterman, 873 F. Supp. 833, 874 (S.D.N.Y. 1995); see also Weldy v. Piedmont Airlines, Inc., 985 F.2d 57, 61 (2d Cir. 1993) (under New York law, four elements needed to establish a prima facie case of slander are "(1) an oral defamatory statement of fact, (2) regarding the plaintiff, (3) published to a third party by the defendant, and (4) injury to the plaintiff.") Defendant argues that, regardless of whether plaintiff is identifiable as the person to which the statement refers[14], the statement is "not reasonably capable of

---

a claim of libel. See Matherson v. Marchello, 473 N.Y.S.2d 998, 1003 (N.Y.App Div. 1984)

[14]Defendant argues that plaintiff has failed to show that the statements refer to him. If the party alleging defamation is not named in the publication, as plaintiff is not named here, "that party must sustain the burden of pleading and proving that the defamatory statement referred to him or her." Chicherchia v. Cleary, 616 N.Y.S.2d 647, 648 (NY App. Div. 1994). The reference to the party alleging defamation may be indirect and may be proven by extrinsic facts. See id. By alleging that he had a video camera and that a nude dancer pushed it in his face, plaintiff has alleged describing the "person with the video camera [who] insulted one of the dancers who put her hand in front of the camera," the allegedly defamatory statement refers to him. Plaintiff must, however, show that these extrinsic facts were "known to those who ... heard the publication" on the Donahue Show. Id. Plaintiff has submitted a news article with his complaint that discusses the incident and describes plaintiff as the person with the video camera who had the camera shoved in his face by dancer Daisy Bonilla (whose stage name is Margarita Russel). Plaintiff does not allege directly

defamatory meaning." Whether a statement is capable of defamatory meaning is a question of law for the court. See Weinstein, 1996 WL 137313, *10; Curry v. Roman, 635 N.Y.S.2d 391, 393 (NY App. Div. 1995); see also Aronson v. Wiersma, 493 N.Y.S.2d 1006 (NY 1985); James v. Gannett Co., 386 N.Y.S.2d 871, 874 (NY 1976). The court may properly dismiss a claim of libel if the relevant statement is not "reasonably susceptible of defamatory connotation." Matherson v. Marchello, 473 N.Y.S.2d, 998, 1004 (NY App. Div. 1984); see also Ram v. Morritt, 612 N.Y.S.2d 671, 672 (NY App. Div. 1994)

Under New York law, only statements that "tend to expose one to public hatred, shame, obloquy, contumely, odium , contempt, ridicule, aversion, ostracism, degradation or disgrace, or to induce an evil opinion of one in the minds of right-thinking persons, and to deprive one of their confidence and friendly intercourse in society" are considered defamatory. Weinstein, 1996 WL 137313, *10 (citing Fairley v. Peekskill Star Corp., 445 N.Y.S.2d 156 (1981)) [sic.]. The court finds that the statements, though arguably proven by extrinsic evidence to refer to plaintiff, are not reasonably susceptible of a defamatory connotation. Statements broadcast on the Donahue show that allegedly referred to plaintiff as having insulted Margarita Russel and having engaged in conduct that was not "nice" do not constitute defamatory statements that are likely to expose plaintiff to public contempt or "induce an evil opinion" of him. Weinstein, 1996 WL 137313, *10; see, e.g., Ram v. Morritt, 612 N.Y.S.2d 671 (NY App. Div. 1994) (statements that plaintiff was a liar, cheat, and debtor were opinions; they were not reasonably susceptible of defamatory meaning); Manno v. Hembrooke, 501 N.Y.S.2d 933 (NY

---

that people who saw the Donahue Show would have read the article about him. Giving plaintiff's allegations a liberal reading, the Court will not dismiss this claim solely on the grounds that it is not of and concerning plaintiff.

App. Div. 1986) (calling plaintiff immature, childish, manipulated, and nonsensical was protected opinion and not reasonably susceptible of defamatory connotation). In addition, plaintiff has not alleged special damages of any variety stemming from WNBC-TV's broadcast of the statements.[15] For the above reasons, plaintiff's libel claim against WNBC-TV is dismissed for failure to state a cause of action.

V. Defendant Larry Silverstein

Plaintiff seems to be making three claims regarding Larry Silverstein.[AH] One Silverstein has violated plaintiff's and other's rights by his involvement in the heroin trafficking/money laundering conspiracy.[AI] Two, Silverstein, as owner and landlord of the property rented to Runway 69,[AJ] has some liability for the actions of his tenants or the guests of his tenants. These actions include assaulting plaintiff outside the club and using aforementioned slush fund to "buy [the] cooperation" of the New York City Police Department[†]

---

[15]Plaintiff would not have to show damages if the statements were defamatory and per se actionable. See, e.g., Weldy, 985 F.2d at 61-62 (slander per se includes statements charging defamed person with "indictable offense" or "serious crime."). The statements at issue here, that someone insulted the dancer and that it was "not a nice thing," do not fall into the category of slander per se.

- - -

Comments of plaintiff under penalty of perjury:

[AH]The fact that codefendants Nixon and Silverstein died long before the order was issued is not mentioned in the order.

[AI]The plaintiff's and many of his neighbors cars have been stolen by addicts to buy the heroin and other addictive drugs.

[AJ]The amended complaint says he was falsely claiming to be owner and landlord.

[†]A fantasy of the order's author not in complaints.

to deprive him of his rights. Three, Silverstein harassed plaintiff by making "nuisance calls" to the plaintiff.

Defendant Silverstein moves to dismiss for failure to state a claim upon which relief may be granted. Fed.R.Civ.P. Rule 12(b) (6). Once again, the claim of conspiracy to deprive POWs and MIAs of their civil rights must be dismissed for lack of standing. Also, as discussed above, the claim of conspiracy to deprive plaintiff of his civil rights must be dismissed for failure to plead conspiracy with sufficient specificity. See Sykes, 13 F.d. at 521; Polur, 912 F.2d at 52; Ostrer, 567 F.2d 551; Chodos, 559 F.Supp. at 72. After dismissing the conspiracy claims, the only remaining claims against Silverstein are negligence for failure to control the actions of his tenants and guests and harassment by making "nuisance calls" to plaintiff. In an Affirmation filed with the motion to dismiss, counsel for Silverstein denies that Silverstein owns the premises. Since this is a motion pursuant to Rule 12(b) (6), the Court must accept the plaintiff's allegations of ownership as true.[16]

Commercial landlords are not liable for the unforeseeable actions or their tenants or their tenants' employees. Smith v. 2J Management Co., 621 N.Y.S.2d 40, 41 (NY App. Div., 1st Dept 1995) (landlord had no duty to protect customers from unforeseeable acts of restaurant and bar employees). Absent some ~~proximate relationship~~

---

[16]Even if plaintiff has sufficiently alleged state law tort claims against Silverstein, in light of the dismissal of the § 1983 claim against him, the Court questions its jurisdiction over these claims. Plaintiff has made no allegations to assert diversity jurisdiction over Silverstein and the Court would decline to exercise pendent jurisdiction over these claims.

- - -

Comments of plaintiff under penalty of perjury:

[16]The order does not address question of for what conspiracy Silverstein lied to neighbors of the property and to the media.

proximate relationship between a landlord and his tenant's employees or guests,[AK] "the former clearly ha[s] no duty to protect plaintiff from the unforeseeable acts of the latter." Id. at 42. According to the complaints, the dancer who assaulted plaintiff was an employee of Silverstein's tenant, Tommy Dewitt, manager of Runway 69, the the Goldfingers International employees who assaulted plaintiff were DeWitt's guests. Plaintiff never alleges that Silverstein had any reason to foresee the actions of his tenant's employees, guests, or patrons.[AL] The assaults had nothing to do with Silverstein's alleged possession, maintenance, or control over the area outside Runway 69,[AM] nor with any hazard or

- - -

Comments of plaintiff under penalty of perjury:

[AK]The Judge's QUOTE nuisance END QUOTE calls evidence relationships of the assaulters. Why is the actual landlord anonymous? First of the three "nuisance" calls was supposed to be from the landlord almost immediately after Police Officers had tried to murder the petitioner. And the last two promised success. The Federal Courts have maintained anonymity for distributors of Federal drugs protected by Federally sanctioned assassins.

[AL]But the Judge's "nuisance" caller claimed to foresee what the assaulters plan for the petitioner's future. NYNEX identified the Judge's "nuisance" caller as Silverstein.

[AM]The assaults depended on the NYPD's control over the areas within sight of its 112th Precinct in which the petitioner was assaulted on **three** occasions. See Miller v. Clinton et al., 96-CV-776 (CBA) in the United States District Court Eastern District of New York. The plaintiff has only been assaulted four times in his twenty-seven years since leaving the Vietnam Conflict. And the Judge's "nuisance" caller promised the fourth, the third under control of the NYPD, would be successful. The "nuisance" callers of Miller v. Tribco, 002420/97 in the Supreme Court of the State of New York County of Queens, promising a fifth murder attempt also claim to be friends of the defendants in Miller v

physical defect in the property. As a result, Silverstein has no landlord liability to Plaintiff for the actions of Russel or the other Goldfingers International employees. See id.; Cavanaugh v. Knights of Columbus Council 4360, 535 NY S.2D 275, 277 (NY App. Div. 1988) ("As a general rule, the owner of premises owes no duty to control the conduct of its patrons or tenants for the benefit of third persons."); Pulka v. Edelman, 390 N.Y.S.2d 393 (NY 1976) (no landlord liability for injury caused by action of patron/guest against third party); see also Bennett v. Ames, 434 N.Y.S.2d 766, 766 (NY App. Div. 1980) (act must be "reasonably foreseeable" for liability). The claim against Silverstein of negligence in failing to control his tenant[AN] or his tenant's patrons, guests, or employees is dismissed for failure to state a claim upon which relief may be granted.

As to plaintiff's allegations regarding the nuisance calls, plaintiff has not alleged a distinct and palpable injury, mental or otherwise, caused by these calls. To the extent that plaintiff's complaints might be read to make out a claim of intentional infliction of emotional distress, plaintiff has not sufficiently alleged such a cause of action. Plaintiff must show that Defendant Larry Silverstein engaged in "extreme and outrageous conduct" with "intent to cause, or disregard of a substantial probability of causing, severe emotional distress." Howell v. New York Post Co., 596 N.Y.S.2d 350, 353 (NY 1993). In addition, plaintiff must show "a causal

- - -

Comments of plaintiff under penalty of perjury:

Silverstein et al. And the first of the four assaults on the petitioner was initiated by one of their coconspirators in the money-laundering. See Miller v KRAVCO, 89-16205 in the Montgomery County Court of Common Pleas (pretrial hearing 5 November 1997 at Norristown, PA).

[AN]Taurus fecum. Supra. author of the order determined Silverstein does not have a landlord - tenant relationship.

connection between the conduct and injury" and that "severe emotional distress" resulted. Id. at 353. Plaintiff has not pled facts supporting the existance of these elements. Plaintiff has never even described what was said during the phone calls. Accordingly, this claim is dismissed for failure to state a claim.

CONCLUSION

For the reasons discussed above, all of plaintiff's claims against each defendant are dismissed without prejudice.

SO ORDERED.

Dated: Brooklyn, New York
November 5, 1996

[signature of]

Carol Bagley Amon
United States District Judge

Harry P. Miller (HPM)